

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LARRY CHATMAN,

Petitioner,

Case No. 2:07-CV-11786  
HONORABLE AVERN COHN

BLAINE LAFLER,

Respondent.

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**ORDER DENYING MOTION FOR A CERTIFICATE OF APPEALABILITY**

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner Larry Chatman, (Petitioner), is an inmate at the St. Louis Correctional Facility in St. Louis, Michigan, where he is serving a sentence of fifteen to thirty years for the crime of armed robbery, Mich. Comp. Laws § 750.529. Petitioner filed a pro se petition for writ of habeas corpus claiming that he is incarcerated in violation of his constitutional rights. He specifically claimed that the jury verdict was against the great weight of the evidence and that he is entitled to resentencing. The Court dismissed the petition because neither claim stated a claim upon which habeas relief may be granted. See Opinion and Order filed May 3, 2007. The Court did not enter a separate judgment. On May 21, 2007, Petitioner filed a paper styled “Motion for Enlargement of Time to File an Objection to the District Court’s Decision and Judgment.” The Court construed the paper as a request for an extension of time in which to file a notice of appeal and granted Petitioner an extension. Petitioner then filed a notice of appeal as well as the instant motion for a certificate of

appealability. For the reasons that follow, the motion will be denied.

## II.

Before Petitioner can appeal the decision, a certificate of appealability (COA) must issue. See 28 U.S.C. § 2253(c)(1) and Fed. R. App. P. 22(b). A COA may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000), the United States Supreme Court held that where a petition is rejected on the merits, “the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” 120 S. Ct. at 1604. The Supreme Court has also explained that “[t]his threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims.” Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). “A prisoner seeking a COA must prove ‘something more than the absence of frivolity’ ‘or the existence of mere good faith on his or her part.’” A prisoner need not prove that “some jurists would grant the petition for habeas corpus .... a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.” Id. at 1040.

In this Circuit, the Court must make an individualized determination of each claim raised in the petition in considering whether or not to grant a COA. See Murphy v. State of Ohio, 263 F.3d 466 (6<sup>th</sup> Cir. 2001) (per curiam). Moreover, where, as here, a Petitioner files a notice of appeal, the Court must issue a order granting or denying a COA. Castro v. United States, 310 F.3d 900 (6<sup>th</sup> Cir. 2002) (per curiam).

## III.

Petitioner sought the issuance of a writ of habeas corpus on the grounds that (1) the verdict was against the great weight of the evidence, and (2) his sentencing guidelines were improperly scored. Petitioner seeks a COA on both claims, as well as the issue of the Court's summarily dismissal of the petition. In its May 3, 2007 Opinion and Order, the Court fully explained why Petitioner's claims did not state a habeas claim because neither claim raised or presented constitutional issues. Reasonable jurists would not debate this conclusion. Accordingly, a COA is DENIED.

SO ORDERED.

s/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: January 16, 2008

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Larry Chatman, 196829, Carson City Correctional Facility, 10274 Boyer Road , P. O. Box 5000, Carson City, MI 48811-5000 on this date, January 16, 2008, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160